

Honorable Richard A. Jones  
Honorable J. Richard Creatura

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IAN SIMMERS,

Plaintiff,

No. 2:21-cv-00100-RAJ-JRC

v.

DEPUTIES' MOTION FOR JUDGMENT  
ON THE PLEADINGS AND JOINDER IN  
KING COUNTY'S MOTION

KING COUNTY, *et al.*,

Defendants.

Note on Motion Calendar:  
April 16, 2021

The King County Sheriff's Deputies—Major McSwain and retired Captains Baxter and Raftis—move for judgment on the pleadings for the reasons stated in King County's motion (Dkt. 29), which the Deputies hereby join. Alternatively, the claims against the Deputies should be dismissed for two other reasons. First, Mr. Simmers hasn't pleaded plausible claims against any of the Deputies. Second, the Deputies are entitled to qualified immunity.

**FACTS**

The pertinent facts are detailed in King County's motion to dismiss (Dkt. 29) and the exhibits to the Declaration of Samantha Kanner (Dkt. 30).

## ARGUMENT

This is a Rule 12(c) motion for judgment on the pleadings, which is evaluated under the same standard as a Rule 12(b)(6) motion to dismiss. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989) (timing is different, but “the motions are functionally identical”). Under Rule 12, dismissal of claims can be based on “the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

### **The Complaint fails to state a plausible claim against the Deputies.**

Under Rule 8(a)(2), a complaint must contain a “short and plain statement of the claim showing the pleader is entitled to relief.” A complaint does not satisfy this pleading standard if it contains only “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Instead, to satisfy Rule 8 and survive a motion to dismiss, “a complaint must contain sufficient factual matter accepted as true to ‘state a claim to relief that is plausible on its face.’” *Id.* at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim has facial plausibility only “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

A court should apply a two-step approach when evaluating whether claims have been adequately pleaded. *Id.* at 679. First, the court should identify and disregard all legal conclusions and other conclusory statements, which are not entitled to an

1 assumption of truth. *Id.* Second, the court should determine whether well-pleaded,  
2 factual allegations, which are entitled to an assumption of truth, “plausibly give rise to an  
3 entitlement to relief.” *Id.*

4 Under *Iqbal* and *Twombly*, the Court must disregard Mr. Simmers’ generic  
5 allegations that “the Police Officer Defendants” violated his rights. These and similar  
6 allegations are legal conclusions, not allegations of fact. Indeed, each is a classic  
7 example of an “unadorned, the-defendant-unlawfully-harmed-me accusation” that must  
8 be disregarded when assessing the adequacy of pleadings. *Iqbal*, 556 U.S. at 678.

9 The remaining allegations do not state a plausible claim against any of the  
10 Deputies. In fact, the Complaint does not allege any specific act or omission by any of  
11 them. Captains Baxter and Raftis are mentioned only four times in the Complaint. Their  
12 names appear in the caption; in the preamble on the first page; in paragraph 31, which  
13 alleges only that “the Bothell PD Officers agreed to seek the prosecution of Plaintiff with  
14 officers from the King County Sheriff’s Office”; and in the prayer for relief at page 28.  
15 Major McSwain’s name appears in the same four places plus paragraph 14, which  
16 alleges that he was a “detective sergeant[ ] with the King County Police, now called the  
17 King County Sheriff’s Department.”

18 With respect to the Deputies, therefore, Mr. Simmers fails to satisfy the  
19 requirement that in “§ 1983 suits, a plaintiff must plead that each Government-official  
20 defendant, through the official’s own individual actions, has violated the Constitution.”  
21 *Iqbal*, 556 U.S. at 676; *see also Keates v. Koile*, 883 F.3d 1228, 1241 (9th Cir. 2018)  
22 (“These defendants cannot be held liable for a constitutional violation under 42 U.S.C. §  
23

1 1983 unless they were integral participants in the unlawful conduct.”). The Complaint  
2 fails to plead specific facts from which it could plausibly be inferred that any of the  
3 Deputies are liable. Unless Mr. Simmers cures this deficiency by amending his  
4 Complaint to allege specific acts or omissions by specific Deputies, his claims must be  
5 dismissed.

6 Of course, Mr. Simmers need not be given an opportunity to amend his  
7 Complaint if the Court dismisses the claims on any of the grounds raised in King  
8 County’s motion. Because leave to amend may be denied if the proposed amendment  
9 would be futile or subject to dismissal. *Wheeler v. City of Santa Clara*, 894 F.3d 1046,  
10 1059 (9th Cir. 2018).

11 **The Deputies are also entitled to qualified immunity.**

12 Qualified immunity is an additional, independent basis for dismissal of Mr.  
13 Simmers’ claims against the Deputies. Police officers are entitled to immunity from civil  
14 liability when their conduct doesn’t violate clearly established law. *Pearson v. Callahan*,  
15 555 U.S. 223, 243–44 (2009). And whether a right was clearly established must be  
16 determined “in light of the specific context of the case, not as a broad general  
17 proposition.” *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in part on other*  
18 *grounds by Pearson*, 555 U.S. at 236.

19 Qualified immunity acknowledges that it can be “difficult for an officer to  
20 determine how the relevant legal doctrine, here excessive force, will apply to the factual  
21 situation the officer confronts.” *Saucier*, 533 U.S. at 205. It serves to “protect officers  
22 from the sometimes ‘hazy border between excessive and acceptable force,’ and to  
23

1 ensure that before they are subjected to suit, officers are on notice their conduct is  
2 unlawful.” *Id.* at 206 (quoting *Priester v. Riviera Beach*, 208 F.3d 919, 926–27 (11th Cir.  
3 2000)). Indeed, it protects “all but the plainly incompetent or those who knowingly  
4 violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

5 The determination of qualified immunity is a question of law. *Dunn v. Castro*, 621  
6 F.3d 1196, 1999 (9th Cir. 2010) (referring to second prong of *Saucier* test); *see also*  
7 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (“On summary judgment, the judge  
8 appropriately may determine, not only the currently applicable law, but whether that law  
9 was clearly established at the time an action occurred.”). To save resources, a court  
10 may dispose of a case on the basis of qualified immunity without determining whether  
11 the police conduct was actually constitutional. *See Pearson*, 555 U.S. at 236–37.

12 Moreover, qualified immunity should be decided promptly, because it is immunity  
13 from suit rather than a mere defense to liability, and its benefits are lost if litigation is  
14 allowed to proceed. *Id.* at 231. In fact, the “driving force” behind creation of the qualified-  
15 immunity doctrine was to ensure insubstantial claims against police officers and other  
16 government officials would be resolved prior to discovery. *Id.* Thus, the Supreme Court  
17 has repeatedly stressed the importance of deciding qualified immunity at the earliest  
18 possible stage. *Id.* at 232.

19 Keeping these principles in mind, the Deputies are entitled to qualified immunity  
20 based on Mr. Simmers’ own admissions in his criminal case. When moving to vacate his  
21 conviction, Mr. Simmers represented to the Superior Court that, at the time of his  
22 interrogation, “few if any police officers contemplated that standard psychological  
23

1 interrogation tactics, especially when used on youthful suspects, could produce false  
 2 confessions.” (Dkt. 30 at 762.) Mr. Simmers’ concession that his interrogation involved  
 3 techniques that were considered “standard” at the time constitutes an admission that  
 4 none of the Deputies knowingly violated the law.

5 Therefore, the claims against the Deputies must be dismissed on the basis of  
 6 qualified immunity because Mr. Simmers has not alleged violation of any law that was  
 7 clearly established at the time of the investigation in 1995.

### 8 CONCLUSION

9 All claims against the Deputies should be dismissed for the reasons stated in  
 10 King County’s motion for judgment on the pleadings. Alternatively, Mr. Simmers has  
 11 failed to plead a plausible claim against any Deputy, and the Deputies are entitled to  
 12 qualified immunity based on Mr. Simmers’ own admission that the police conduct in this  
 13 case was considered acceptable at the time.

14 DATED: March 25, 2021

15 SEAMARK LAW GROUP PLLC  
 16 Attorneys for Major McSwain and  
 Captains Baxter and Raftis

17 s/Geoff Grindeland

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**SATISFACTION OF MEET-AND-CONFER REQUIREMENT**

I declare under penalty of perjury that I am over the age of 18 and competent to testify, and that the following is true and based on my personal knowledge:

1. I am one of the attorneys for Major McSwain and retired Captains Baxter and Raftis.

2. On March 24, 2021, counsel for all parties met and conferred via Microsoft Teams to discuss the Defendants' planned motions for judgment on the pleadings. Defense counsel explained the factual and legal bases for the motions, and Plaintiff's counsel explained why he disagreed. Despite conferring in good faith for approximately 50 minutes, counsel were unable to narrow the issues for decision by the Court.

Signed March 25, 2021, at Bainbridge Island, Washington.

s/Geoff Grindeland  
Geoff Grindeland

**CERTIFICATE OF SERVICE**

I certify that on the date below I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

**Attorneys for Plaintiff**

David B. Owens  
John Hazinski

**Attorney for King County**

Samantha D. Kanner

**Attorneys for Bothell Defendants**

Shannon M. Ragonesi  
Paul Joseph Triesch

I further certify that on the date below I mailed by U.S. Postal Service a copy of the foregoing document to the following non-CM/ECF participants:

**N/A**

DATED: March 25, 2021

*s/Geoff Grindeland*

Geoff Grindeland